

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

JIMMY DAVIS

PLAINTIFF

V.

CAUSE NO. 5:20-CV-144-CWR-MTP

MAJ. ERICA PERKINS, ET AL.

DEFENDANTS

ORDER

In this disturbing case, Jimmy Davis alleges that his jaw was broken in a brutal attack by prison guards in March 2020. Now before the Court are the defendants' motion for summary judgment for failure to exhaust administrative remedies, the Magistrate Judge's Report and Recommendation on that motion, and Davis's objection to the R&R.

There is no factual dispute in the documents. Davis did not exhaust his administrative remedies for this assault.

His response to the motion successfully pointed out several ARPs that prison officials missed when preparing their evidence. This suggests that Davis is knowledgeable about the process and diligently keeps track of his ARPs. But even after including those additional documents, the evidence does not show exhaustion for this unfortunate event.

To this, Davis's objection tells the Court that the assault happened, and alleges that prison staff have a conflict of interest in the ARP process. But that is not evidence that administrative remedies were unavailable in this instance. *See Dillon v. Rogers*, 596 F.3d 260, 267 (5th Cir. 2010). Accordingly, the objection is overruled, the R&R is adopted as this Court's order, and the

motion for summary judgment is granted. No strike is issued.¹

SO ORDERED, this the 30th day of March, 2021.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE

¹ The allegations are serious. Although Davis did not exhaust his administrative remedies and his lawsuit cannot go forward, that failure does not prevent prison officials from investigating the allegations. And, if true, take the appropriate action against all involved, including referral for criminal prosecution.